

REMARKS

Claims 1-51 are pending in the present application. Claims 1, 19, 22, 25, 34, 37, 40, 43 and 47 are independent claims. Applicant respectfully responds to the Office Action below.

Double Patenting

Claims 1-51 are rejected under the judicially created doctrine of obviousness-type double patenting over claims of U.S. Application No. 10/838,613 (now U.S. Patent No. 7,697,501) and U.S. Patent No. 7,369,855.

Applicant respectfully traverses the rejection. The claimed subject matter of Applicant's application and those of U.S. Patent Nos. 7,697,501 and 7,369,855 are designed with different structures operating under different principles and serving different purposes. As such, the claims of Applicant's application are patentably distinct from those of U.S. Patent Nos. 7,697,501 and 7,369,855.

In the rejection, the Examiner asserts that "[c]laims of Patent/Application contain(s) every element of claims(s) of the instant application and thus anticipate the claim(s) of the instant application." (Page 3 of the Office Action.)

Applicant respectfully submits that the assertion is erroneous. For example, throughout Applicant's claims, limitations relating to the terms "secure communications" and "shared secret" are claimed but nowhere can be found in the corresponding claims of U.S. Patent Nos. 7,697,501 and 7,369,855.

Accordingly, Applicant respectfully requests that the rejection be withdrawn.

Claim Rejections – 35 USC § 101

Claims 1-18 and 22-51 are rejected under 35 USC § 101 as being directed to non-statutory subject matter. In the rejection, the Examiner alleges that the claims are merely directed to receiving and storing shared secret and do not produce a useful, concrete and tangible result.

Over a decade ago, the Court of Appeals for the Federal Circuit (CAFC) established and adopted a test for patentability under 35 U.S.C. § 101. Specifically, the CAFC held that a claim involving an algorithm, in and of itself, would not render the claim claiming nonstatutory subject matter unless the recited operation does not produce an useful, concrete and tangible result. *State Street Bank & Trust Co. v. Signature Financial Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998); *AT&T Corp. v. Excel Commc'ns, Inc.*, 172 F.3d 1352, 1355 (Fed. Cir. 1998). However, the recent holding in *In re Bilski*, 545 F.3d 943, 88 U.S.P.Q.2d 1385 (Fed. Cir. 2008) has changed the landscape of the law in this respect. The inquiry concerning “useful, concrete and tangible result” is no longer the applicable test. (“...our opinions in *State Street* and *AT&T* relying solely on a ‘useful, concrete and tangible result’ analysis should no longer be relied on.” *Id.*, 545 F.3d at 960.) Instead, the proper test is whether the claimed process alters something or is tied to a machine or apparatus. (“... whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court.” *Id.*, 545 F.3d at 996).

The subject matter of claims 1-18 and 22-51 is clearly tied to a machine or apparatus. For instance, the various nodes recited in the claims are described as communications entities in the Applicant’s disclosure (e.g., see FIGs. 1-3 and the relevant descriptions in the specification). As such, Applicant’s claims 1-18 and 22-51 are patentable under 35 U.S.C. § 101.

Accordingly, Applicant respectfully requests the rejection be withdrawn.

Claim Rejections – 35 USC § 112

Claims 1- 51 are rejected under 35 USC § 112, second paragraph, as being indefinite. In the rejection, the Examiner contends that there are no recitations in the claims on how the terms such as “secure communications” and “secure flows” as being achieved. The Examiner then suggests the inclusion of the limitations such as recited in claims 17 and 18 into the rejected independent claims to cure the alleged deficiency.

The law is well settled that an applicant is entitled to claim as broad as the prior art and his disclosure will allow. *In re Rasmussen*, 650 F.2d 1212, 211 USPQ 323, 326 (CCPA 1981). The breadth of a claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597, 600 (CCPA 1971). The law does not require that every term in a claim to be explained and recited that how it is achieved. Instead, if the claim term needs to be explained at all, it is the function of the specification for the explanation. If everything in the specification were required to be read into the claims, or if structural claims were to be limited to devices operated precisely as a specification-described embodiment is operated, there would be no need for claims. Nor could an applicant, regardless of the prior art, claim more broadly than that embodiment. *SRI Int'l v. Matsushita Elec. Corp.*, 775 F.2d 1107, 227 USPQ 577, 585 (Fed. Cir. 1985).

Here, the contended terms “secure communications” and “secure flows” are clearly and amply described in the specification (e.g., see Fig. 19 and the relevant descriptions). As such, these claim terms are in full support by the specification, and consequently properly recited in the claims.

Withdrawal of the rejection under 35 U.S.C. § 112, second paragraph is believed to be in order and is respectfully requested.

Conclusion

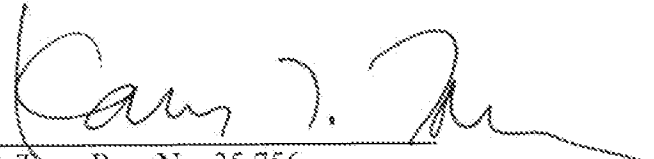
In view of the foregoing, Applicant respectfully submits that all pending claims in the present application are in condition for allowance. Reconsideration and an early allowance are respectfully requested.

Please charge any fees or deposit any overpayments that may be associated with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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By: _____


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